No. SC85166

IN THE SUPREME COURT OF MISSOURI

State ex rel. ANDRE TAYLOR,
Petitioner,

vs.

STEVEN MOORE, Superintendent,
Western Missouri Correctional Center,
Respondent.

PETITION FOR WRIT OF HABEAS CORPUS

PETITIONER'S REPLY BRIEF

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I. PETITIONER IS ENTITLED TO A JUDGMENT THAT HE IS UNLAWFULLY CONFINED, AND AN ORDER GRANTING HIM A WRIT OF HABEAS CORPUS AND RELEASING HIM FROM RESPONDENT'S CUSTODY, BECAUSE THE JUDGMENT OF THE TRIAL COURT WAS ENTERED OUTSIDE THE JURISDICTION OF THE TRIAL COURT BY THE TRIAL COURT'S ACCEPTING PETITIONER'S PLEA AND SENTENCING PETITIONER TO A LONG TERM DRUG TREATMENT PROGRAM WITHOUT NOTIFYING THE MISSOURI DEPARTMENT OF CORRECTIONS OR HAVING PETITIONER SCREENED BY THE MISSOURI DEPARTMENT OF CORRECTIONS AS REQUIRED BY SECTION 217.362, RSMO, AND THEREBY RENDERING PETITIONER'S PLEA VOID.[1]

As established in Petitioner's opening brief, the trial court in this case acted outside its jurisdiction when it took an action (sentencing Petitioner Andre Taylor to a Long Term Drug Treatment Program, or LTDTP) not authorized by statute (sentencing Mr. Taylor to LTDTP without Section 217.362, RSMo's authorization to do so only after checking with the Missouri Department of Corrections and ascertaining Mr. Taylor's

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[1] For the Court's convenience, Petitioner has retained the same numbering and headings as in his original brief.

eligibility).[2] Trial courts act outside their jurisdiction when they take actions not authorized by statute. *See* ***State ex rel. Stewart v. Tillman***, 533 S.W.2d 699, 700-01 (Mo. App. 1976); ***State ex rel. Wiggins v. Hall***, 452 S.W.2d 106, 108 (Mo. 1970); ***Pearson Drainage Dist. v. Erhardt***, 201 S.W.2d 484 (Mo. App. 1947); ***Merriweather v. Grandison***, 904 S.W.2d 485, 486 (W. D. Mo. 1995).

Respondent takes a too narrow view of jurisdiction. In the case law, jurisdiction has been defined broadly as "the *power* of the justice, to render the judgment under and pursuant to which the prisoner is held," ***Ex Parte Coder***, 44 S.W.2d 179, 191 (Mo. App. 1931), and the "power to render the particular judgment in the particular case," ***State ex rel. Dutton v. Sevier***, 83 S.W.2d 581, 582 (Mo. banc 1935). The relevant statute takes a similarly broad tack, stating that habeas corpus is warranted when jurisdiction is exceeded "as to matter, place, sum or person." **Section 532.430(1), RSMo.** Put simply, under these standards jurisdiction refers to the authorization of the court to take the action that it did.

Here, it is apparent on the face of the record that the trial court exceeded its jurisdiction when sentencing Mr. Taylor under Section 217.362 without following the statutory requirements 217.362 lays out. A cursory review of the Guilty Plea and Sentencing transcript (Petitioner's Appendix A1 – A16) and the related Judgments (Petitioner's Appendix A17 & A18) reveal that the trial court did not follow the

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[2] All references to RSMo are to 1994.

requirements of Section 217.362 before sentencing Mr. Taylor under that statute. Therefore, Respondent's voluminous argument regarding jurisdictional analysis applying only to "facial validity" is inapposite, regardless of the accuracy of that argument – facial invalidity *does* exist here.

In addition, Respondent's implication that the reasons for Mr. Taylor's LTDTP ineligibility, his previous convictions, are not apparent from the face of the record, is a red herring. This Court need not examine the reasons for Mr. Taylor's ineligibility, or indeed the fact of the ineligibility at all, to determine that the trial court did not follow the requirements of Section 217.362, and therefore did not have the jurisdiction to take the actions it did.

Respondent claims that *Simmons* and *Clay* control the jurisdictional analysis of this case. ***State ex rel. Simmons v. White***, 866 S.W.2d 443 (Mo. banc 1993); ***Clay v. Dormire***, 37 S.W.3d 214 (Mo. banc 2000). However, this claim is incorrect.

The jurisdictional question in *Simmons* focused on whether an insufficient information "destroy[ed] the court's jurisdiction." 866 S.W.2d at 446. As previously decided, and as noted in *Simmons*, insufficiency of an information does not rise to a jurisdictional concern "unless the information failed 'by any reasonable construction [to] charge the offense of which the defendant was convicted'." ***Id.*** (quoting ***State v. Parkhurst***, 845 S.W.2d 31, 35 (Mo. banc 1992)). The *Parkhurst* court took great care to distinguish between questions of jurisdiction and questions of the sufficiency of an information, which it termed "two distinct concepts." 845 S.W.2d at 35. This decision

tracked closely the statutory requirements of the sufficiency of an information, which say that an information shall not be deemed invalid unless, *inter alia*, the substantial rights of the accused are prejudiced, or conversely that an information does not become valid if it does not fully inform the accused of the crime of which he is accused. **Section 545.030, RSMo.**

There is no corresponding language in the statute at issue here, Section 217.362. In other words, this Court need not engage in "substantial rights/prejudice" or "full information" analysis, as it would under a *Parkhurst*/*Simmons* analysis, to determine whether the trial court exceeded its jurisdiction. Here, it is clear that Section 217.362 does not authorize the trial court to do what it did. The structures of Sections 217.362 and 545.030 are different, and require different outcomes. Therefore, *Simmons* is not implicated, and does not control.

Clay is irrelevant for at least two reasons. First, the sentence assessed by the trial court in that action was "*within* the statutory range of punishment of five years to life . . . ." 37 S.W.3d at 216 (emphasis added). Here, the trial court's action of sentencing Mr. Taylor to the LTDTP was *outside* Section 217.362's authorization to do so only after the court followed other statutory requirements, which it did not. Second, the habeas corpus petitioner in *Clay* "ma[de] no claim that the sentence imposed exceeded that authorized by law or that the sentencing judge had no jurisdiction otherwise." ***Id.*** at 218. Here, that is exactly what Mr. Taylor claims, and exactly what happened. Therefore, *Clay* is not implicated, and does not control.

II. PETITIONER IS ENTITLED TO A JUDGMENT THAT HE IS UNLAWFULLY CONFINED, AND AN ORDER GRANTING HIM A WRIT OF HABEAS CORPUS AND RELEASING HIM FROM RESPONDENT'S CUSTODY, BECAUSE THE JUDGMENT OF THE TRIAL COURT WAS ENTERED AFTER PLEA COUNSEL RENDERED INEFFECTIVE ASSISTANCE TO PETITIONER IN CONSULTATION LEADING TO PETITIONER'S PLEA BY FAILING TO CONSIDER OR ADVISE PETITIONER AS TO THE ELIGIBILITY REQUIREMENTS FOR LONG TERM DRUG TREATMENT UNDER SECTION 217.362, RSMO, WHICH INEFFECTIVE ASSISTANCE CAUSED PETITIONER TO PLEAD GUILTY IN ANTICIPATION OF ENTERING SAID LONG TERM DRUG TREATMENT PROGRAM, FOR WHICH PROGRAM PETITIONER WAS NOT IN FACT ELIGIBLE.

A. Availability of 'Cause and Prejudice' Relief

Respondent unnecessarily muddies the waters by incorrectly defining what "factual" knowledge Mr. Taylor allegedly had that would have allowed him the ability to file a motion for post-conviction relief addressing the issues raised in Petitioner's Points II and III. Respondent defines such knowledge as the mere fact that Mr. Taylor "had prior violent convictions." Respondent's Statement, Brief and Argument in an Original Action in Habeas Corpus at 21 ("Respondent's Brief"). Yes, Mr. Taylor knew of his prior violent convictions at all times since he was convicted of them.

But that knowledge is not the factual knowledge that would have given rise to Mr. Taylor's obligation to complain of denial of his entry into the LTDTP. In a tautology that seems to have escaped Respondent, the factual knowledge Mr. Taylor needed to complain of MODC's denial of his entry into the LTDTP was *knowledge of MODC's denial of his entry into the* LTDTP. This knowledge, which is not legal knowledge, was not available to him until after January 19, 2000. (Petitioner's Appendix A21).

In an implicit recognition that the MODC denial is the key factual knowledge, Respondent argues that placing this knowledge in the hands of Mr. Taylor's (ineffective) counsel in December 1999 is sufficient to impute the knowledge to Mr. Taylor. However, neither of the cases cited by Respondent in this argument deal with a factual assessment of whether counsel's alleged knowledge of a key fact may be imputed to a client, in the absence of the client's actual knowledge, to trigger a post-conviction remedial responsibility. ***Covey v. Moore***, 72 S.W.2d 204 (Mo. App. W. D. 2002); ***Sidebottom v. Delo***, 46 F.3d 744 (8th Cir. 1995). Indeed, such a rule would appear to flip the agent-principal relationship that is at the core of the attorney-client relationship.

B. <u>Ineffective Assistance of Counsel</u>

Respondent does not seriously contest that Mr. Taylor's counsel was ineffective in his inaction at the plea and sentencing stages of Mr. Taylor's case. Indeed, it would be difficult to make such an argument, given the admonishment of the Missouri Supreme Court Region IV Disciplinary Committee that Mr. Taylor's counsel "fail[ed] to

represent [his] client in a competent manner" and "fail[ed] to be diligent in [his] representation of [his] client." (Petitioner's Appendix A23).

Rather, Respondent's arguments in this section reduce to a purely conjectural exposition on Mr. Taylor's state of mind in 1999. *See* Respondent's Brief at 24-25. Nothing in this conjecture about Mr. Taylor's state of mind is supported by anything in the record. Counsel for Respondent had the opportunity to examine Mr. Taylor about any of these matters at the November 13, 2003 hearing before the Special Master, and did not do so. Indeed, the only evidence in the record from that hearing or anywhere else is that Mr. Taylor would have gone to trial in 1999 had he known he was not eligible for LTDTP. (Respondent's Appendix A23 – A24). The Special Master found this evidence to be credible. (Respondent's Appendix A5 – A6, A11).[3] The only possible conclusion from the evidence before the Court is that Mr. Taylor would have gone to trial in 1999 had he known he was not eligible for LTDTP.

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[3] The Special Master also found no credible evidence that Mr. Taylor knew before January 19, 2000 that he had been denied entry into the LTDTP. (Respondent's Appendix A5). As noted by Respondent, this renders moot the argument made at pp. 22-23 of Respondent's Brief.

III. PETITIONER IS ENTITLED TO A JUDGMENT THAT HE IS UNLAWFULLY CONFINED, AND AN ORDER GRANTING HIM A WRIT OF HABEAS CORPUS AND RELEASING HIM FROM RESPONDENT'S CUSTODY, BECAUSE THE TRIAL COURT COMMITTED ERROR IN SENTENCING PETITIONER TO A LONG TERM DRUG TREATMENT PROGRAM UNDER SECTION 217.362, RSMO, FOR WHICH PROGRAM PETITIONER WAS NOT IN FACT ELIGIBLE.

A. Availability of 'Cause and Prejudice' Relief

Again, the analysis of the availability of 'cause and prejudice' relief pertinent to Petitioner's Point III is identical to that delineated in Petitioner's Point II.A, *supra*. The arguments of Point II.A are incorporated into Petitioner's Reply Brief Section III.A.

B. Trial Court Error

Respondent admits that the trial court committed error in this case. "There is no doubt the sentencing court made an error . . . ." (Respondent's Brief at 19). "[T]he trial court erred in sentencing Mr. Taylor to Long Term Drug Treatment." (Respondent's Brief at 20). It is important to note that under the cause-and-prejudice analysis which Point III addresses, Respondent's jurisdictional arguments and "facial analysis" arguments, applicable to the jurisdictional questions raised in Point I, are not applicable to the cause-and-prejudice arguments asserted in Point III. Under this argument, if Mr.

Taylor is eligible for cause-and-prejudice relief, since Respondent has admitted the existence of error, the inquiry should end.

C. Petitioner Did Not 'Invite' The Trial Court Error In This Case

Still, in a last ditch effort, Respondent argues that Mr. Taylor invited the error committed by the trial court. Such a boot-strap argument ignores the realities of what occurred on October 12, 1999. Mr. Taylor was advised by counsel (ineffectively, as noted above) and sentenced by a trial court (in error, as noted above), neither of which apparently knew or adhered to the requirements of Section 217.362. To suggest that Mr. Taylor played possum in the face of this ineffectiveness and error, only to keep alive the possibility of this habeas petition some years later, is absurd. Further, there is no evidence in the record to support such an intention on the part of Mr. Taylor, and counsel for Respondent did not ask Mr. Taylor about any such intention when it had the opportunity to question him on November 13, 2003. This hail mary should be rejected.

CONCLUSION

Mr. Taylor is entitled to a writ of habeas corpus, releasing him from the custody of Respondent, for three independent reasons. First, the trial court acted outside its jurisdiction when it sentenced Mr. Taylor to a Long Term Drug Treatment Program without fulfilling the statutory requirements of Section 217.362, RSMo. Second, Mr. Taylor's plea counsel rendered ineffective assistance in advising Mr. Taylor to accept the offered plea before trial, which offer included sentencing to the Long Term Drug Treatment Program under Section 217.362, RSMo, without advising Mr. Taylor as to the applicability of Section 217.362, or indeed even investigating the applicability of Section 217.362. Third, the trial court erred by sentencing Mr. Taylor to a Long Term Drug Treatment Program under Section 217.362, RSMo, for which Mr. Taylor was not in fact eligible.

Respectfully submitted,

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DATED: April 30, 2004

CERTIFICATE OF COMPLIANCE

The undersigned certifies that the foregoing Petitioner's Reply Brief complies with the limitations contained in Rule 84.06(b), contains 2,443 words, as counted by the word-processing software used, Microsoft Word, and that the floppy disk filed together with Petitioner's Reply Brief in accordance with Rule 84.06(g) has been scanned for viruses and is virus-free.

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CERTIFICATE OF SERVICE

I hereby certify that one copy of Petitioner's Reply Brief and one copy of the disk required by Rule 84.06(g) has been served on counsel for Respondent, on May 3, 2004, and one copy of Petitioner's Reply Brief has been served upon The Honorable Carl D. Gum, Jr., at the address noted below, on April 30, 2004, both via First Class United States Mail.

_____
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